Filed by:

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Trial Merits Panel Administrative Patent Judge Mail Stop Interference P.O. Box 1450 Alexandria Va 22313-1450 Tel: 571-272-4683

Filed August 16, 2006

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

DAVID B. MELVIN

Junior Party (Patent Nos. 6,190,408 and 6,409,760),

v.

CYRIL J. **SCHWEICH**, JR. and TODD J. MORTIER Senior Party (Application No 10/073,968).

Patent Interference No. 105,452 (MPT) (Technology Center 3700)

JUDGMENT - REQUEST FOR ADVERSE - Bd. R. 127(b)

Before: MEDLEY, TIERNEY and NAGUMO, Administrative Patent Judges

TIERNEY, Administrative Patent Judge.

This interference was declared on July 10, 2006. Per the Standing Order (Paper No. 2), within fourteen days of the declaration of the interference, each party in interference must file certain mandatory notices (notice of real party in interest, related proceedings) as well as a notification of lead and backup counsel. (Paper No. 2, ¶¶ 8 & 108). Junior Party Melvin failed to file the required papers.

1	The official USPTO address for the involved Melvin '408 and '760 patents lists Dr.
2	David B. Melvin as the contact person for the patent. Earlier today, a trial division paralegal,
3	Yolunda Townes, contacted David B. Melvin, regarding the filing of the required papers. Dr.
4	Melvin informed Ms. Townes that Junior Party Melvin would not proceed in this interference
5	and was abandoning the contest. A request for abandonment of the contest under
6	Bd.R. 127(b)(4) is construed as a request for adverse judgment. Bd.R. 127(b).
7	It is:
8	ORDERED that judgment on priority as to Count 1, the sole count in interference, is
9	awarded against Junior Party Melvin.
10	FURTHER ORDERED that Junior Party Melvin is not entitled to a patent containing
11	claims 1-39 of U.S. Patent No. 6,190,408, all of which correspond to Count 1.
12	FURTHER ORDERED that Junior Party Melvin is not entitled to a patent containing
13	claims 1-50 of U.S. Patent No. 6,409,760, all of which correspond to Count 1.
14	FURTHER ORDERED that a copy of this paper shall be made of record in the files of
15	application 10/073,968 and U.S. Patent No. 6,409,760 and U.S. Patent No. 6,190,408.
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FURTHER ORDERED that should there be a settlement agreement, the parties 1 attention is directed to 35 U.S.C. §135(c) and Bd.R. 205. 2 3 /Sally C. Medley/ 4 SALLY C. MEDLEY 5 ADMINISTRATIVE PATENT JUDGE 6 7 8) BOARD OF PATENT 9 /Michael P. Tierney/ APPEALS AND MICHAEL P. TIERNEY 10 **INTERFERENCES** 11 ADMINISTRATIVE PATENT JUDGE 12 13 /Mark Nagumo/ 14 MARK NAGUMO 15 ADMINISTRATIVE PATENT JUDGE 16 17 18 19 20 cc (electronic filing): 21 22 23 Counsel for MELVIN: 24 25 Dr. David B. Melvin 26 CardioEnergetics, Inc. 27 3130 Highland Avenue, 3rd Floor Cincinnati, OH 45219-2374 28 29 david.melvin@uc.edu 30 31 Counsel for SCHWEICH: 32 33 Leslie I. Bookoff, Esq. FINNEGAN, HENDERSON, FARABOW, 34 35 **GARRETT & DUNNER LLP** 36 901 New York Avenue, N.W. 37 Washington, D.C. 20001-4413 38 les.bookoff@finnegan.com troy.grabow@finnegan.com 39

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Townes, Yolunda

From: Townes, Yolunda on behalf of Interference Trial Section

Sent: Wednesday, August 16, 2006 5:03 PM

To: 'david.melvin@uc.edu'; 'les.bookoff@finnegan.com'; 'troy.grabow@finnegan.com'

Subject: Interference #105452_010 (MPT) - Judgment-Request for Adverse-Bd.R. 127(b)

Judgment - Request for Adverse - Bd.R. 127(b)

Yolunda R. Townes Paralegal Specialist Interference Trial Section 571-272-4683